

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA,

Plaintiff,

and

SIERRA CLUB,

Intervenor-Plaintiff,

v.

DTE ENERGY COMPANY AND
DETROIT EDISON COMPANY,

Defendants.

Civil Action No.
2:10-cv-13101-BAF-RSW

Judge Bernard A. Friedman

Magistrate Judge R. Steven Whalen

**STIPULATION TO NON-MATERIAL
MODIFICATION OF THE CONSENT DECREE**

The Parties have agreed to a non-material modification of one aspect of the Consent Decree resolving this matter. Pursuant to Paragraph 106 of the Consent Decree, no action is required by the Court.

Background

Plaintiff, the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), filed a complaint in this action on August 5, 2010. The Court granted Plaintiff-Intervenor Sierra Club’s motion to intervene on November 23, 2010. The United States and Sierra Club (collectively “Plaintiffs”) later amended their complaints, and the Court granted leave to file the amended complaints (“Complaints”) on April 9, 2014. The

Complaints allege violations of the Clean Air Act (“CAA” or “the Act”) against DTE Energy and Detroit Edison Company (“Defendants”).

After years of litigation, the Parties reached a Consent Decree that the Court entered in July 2020. ECF No. 282. The Consent Decree requires DTE to take specified actions at its coal-fired units between now and 2030, to pay a civil penalty, and to perform a \$5.5 million mitigation project. The mitigation project is the subject of this Modification.

Relevant Consent Decree Provisions

The mitigation project requires DTE to fund the replacement of school buses and/or transit buses within Wayne County with lower-emission buses. The requirements for the project are set forth in Section VI of the Consent Decree and Appendix A to the decree. One requirement was that all buses to be replaced be from model years 1996 through 2009. *See* CD Appendix A at ¶¶ 8.f, 14.f. The Consent Decree did not specify what type of buses could qualify as replacement buses, nor require any particular emissions level for the new buses.

In developing its plans to implement the mitigation project, DTE learned that there were no transit buses and very few school buses from those model years still operational. To meet the Consent Decree requirements, DTE has proposed a plan—currently under review by the United States and Sierra Club—to replace 10 transit buses and six school buses with electric buses. Over the lifetime of the replacement buses, this proposal would reduce emissions by about 160,000 short tons of greenhouse gas pollutants, 5,000 pounds of fine particulate matter, and 1.1 million pounds of oxides of nitrogen. Because electric replacement buses provide emissions reductions even compared to relatively new diesel buses, the project will result in significant emissions reductions even without the model year requirement. Therefore, to allow the

mitigation project to proceed, the Parties agreed to excise the model year requirement from the Consent Decree.

Paragraph 106 of the Consent Decree states that the Parties may modify the provisions of the Consent Decree through “a subsequent written agreement signed by the Parties.” Material changes to the decree require approval by the Court. Because the proposal achieves the environmental benefit envisioned by the Parties, the Parties agree that the change is not a material one. The Parties further agree that this Stipulation is the subsequent written agreement required by Paragraph 106.

The Parties agree that the undersigned representatives are fully authorized to enter into the terms and conditions of this Stipulation. This Stipulation may be executed in several counterparts, each of which will be considered an original.

Terms of the Stipulation to a Non-Material Modification of the Consent Decree

The Parties agree that the Consent Decree is modified as follows:

1. Paragraphs 8.f and 14.f of Appendix A of the Consent Decree shall be stricken and replaced with the following provision:

“Has a diesel-powered engine; and”

2. All other terms of the Consent Decree remain unchanged and continue in full force and effect.

3. The Effective Date of this Stipulation shall be the date of the last Party’s signature.

4. Upon execution of this Stipulation by all Parties, the Parties shall promptly file it with the Court to memorialize the Modification.

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FOR THE UNITED STATES

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Dated Nov. 18, 2021

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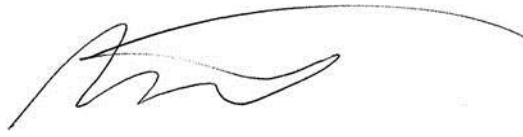
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FOR SIERRA CLUB

By its Counsel:

11/10/2021
Date

A handwritten signature in black ink, appearing to read 'Shannon Fisk', written over a horizontal line.

SHANNON FISK
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FOR DTE ENERGY CO. AND DETROIT EDISON CO.

11/05/2021

Date



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